

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**COMPANY PETITION No. 139 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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SHREE DIGVIJAY CEMENT CO. LTD. - Petitioner(s)
Versus
A.N. DESAI TRADING P. LTD. - Respondent(s)

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Appearance :

MR AR GUPTA for Petitioner(s) : 1,
MR JR SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 02/11/2006****ORAL JUDGMENT**

Present company petition has been filed by the petitioner under sections 433 and 434 of the Companies Act, 1956 for an appropriate order of winding up of M/s A.N. Desai Trading Pvt. Ltd.

2. It is the contention on behalf of the petitioner that the respondent company has been purchasing cement as dealer from the petitioner by its various orders and therefore, the respondent company had a running account with the petitioner. That the petitioner had supplied cement as per the orders of the respondent company and the respondent company duly received the said cement. That against the supply of cement, the respondent company is duly liable to pay Rs.5,19,682/- as on 1-12-2002. It is also further submitted that the respondent company is also liable to pay interest at the rate of 21% per annum on the said amount as agreed between the parties and therefore, the respondent company is liable to pay interest at the rate of 21% from 1-12-2002 on the due and payable amount till realization. It is submitted that in spite of the various reminders, the respondent did not make the payment due and payable to the petitioner company and therefore, the petitioner company served a statutory notice dated 15-10-2003 under section 434 of the Companies Act, which was duly served on the respondent company on 18-10-2003. It is also further submitted that the petitioner sent corrigendum dated 25-11-2003 to the statutory notice which is also duly served on the respondent company on 27-11-2003. It is submitted

that neither there was any reply to the statutory notice nor any payment has been made towards the demands. It is also further submitted that even there is no reply filed to the present company petition. No disputes have been raised with regard to the dues of the petitioner company and it is requested to pass appropriate order of winding up of the respondent company by submitting that company is unable to pay its dues and has lost financial substratum.

3. This matter is called out twice today, the learned advocate appearing on behalf of the respondent company is absent. On going through the entire record, it appears that there is no reply to the statutory notice served by the respondent company served under section 434 of the Companies Act. Not only that, there is no reply filed by the respondent company opposing the present company petition, amount is also not disputed. Admission of the present company petition was also advertised in local newspaper and an appropriate affidavit is also filed to that effect. No objections have been received pursuant to the same opposing the company petition. Even after the admission, neither any amount is paid nor the respondent company has come out with any proposal to make the

payment. Under the circumstances, it appears that the respondent company is not in a position to pay the dues to the creditors and is unable to pay the dues of the petitioner company and has lost its financial substratum. Under the circumstances, the respondent company is required to be wound up.

4. For the reasons as stated above, petition succeeds. The respondent company is ordered to be wound up. The official liquidator attached to this Court is appointed as official liquidator for the respondent company. The Official Liquidator is hereby asked to take possession of the properties (movable and immovable) of the respondent company immediately along with its bank accounts, cash and accounts books etc after recording inventory. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note and other inventory etc.

5. This petition is accordingly disposed off. No costs.

shekhar/-

(M.R.SHAH, J.)